

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSTTTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.

UNITED STATES OF AMERICA
Respondent

Against

ALBERTO SOTO-LARA
Petitioner

CIVIL ACTION
No. 04-10498(WGY)

MOTION FOR INCLUSION OF ADDITIONAL CASES

COMES NOW, the Petitioner, acting pro se, and respectfully moves for permission to include additional cases, specifically the combined Supreme Court order for United States v. Booker/United States v. Fanfan, 543 U.S. _____ (2005); for consideration in the above styled pending case, and in support for such, avers as follows:

1. Alberto Soto-Lara is the Petitioner, who is currently incarcerated at F.C.I. Elkton, Ohio.

2. Alberto Soto-Lara filed an initial brief pursuant to Section 2255 of Title 28 U.S.C. One topic of the Brief was the illegal judicial decisions made during sentencing without the input of a jury, specifically the determination that Mr. Soto-Lara was entitled to an upward departure of 4 levels base on role in the offense when a 2 levels increase was agreed on the plea agreement. A pertinent objection is also raised here due to the quantity of drug determination by the District Court, which differs from the amount charged in the indictment and/or agreed on. Soto-Lara was sentenced under the Federal Sentencing Guidelines.

3. In that Brief the violation of Blakely v. Washington, 124 S. Ct. 2531 (2004), the case that originally brought the implementation of the Federal Sentencing Guidelines into question, was extensively discussed under other authorities. **See Petitioner Brief at 10,11&12.**

4. That Brief address the Blakely, Booker and Fanfan's issue under other authorities. Therefore, the cases sought in this motion to be included -Blakely, Booker and Fanfan - are directly on point and the Court should connect Petitioner claims with this new Supreme Court Authorities.

5. Currently, briefing has been completed. No final decision have been made regarding the Petitioner Motion.


6. Since filing the Brief, the Supreme Court on June 23, 2004 and January 12, 2005, decided and wrote a combined order for Blakely, Booker and Fanfan. In those cases the Supreme Court stated that it is possible for judicial decision making not guided by a jury to violate a Defendant's due process rights. In Soto-Lara's case the district Court made its own finding and increase Petitioner sentence by 4 levels instead of 2 levels as agreed upon the plea agreement with the government. The Supreme Court also determined that the Federal Sentencing Guidelines are now advisory rather than mandatory.

7. Although Petitioner included Blakely, Booker and Fanfan's issues, that inclusion did not include the actual cases, wording or specifics of those cases as they had not yet been decided. Petitioner therefore respectfully requests that this court consider the newly written decisions in Blakely, Booker and Fanfan when considering his petition.

8. It is in the interest of justice to permit inclusion of these additional cases for consideration of the Petition as it is new law applicable to an issue currently under review before this Court.

9. WHEREFORE, numerous supporting reasons have been given for inclusion of these additional cases. And Petitioner humbly requests from this Honorable Court to permit inclusion of the newly Supreme Court decision when considering his Petition under Title 28 U.S.C. Section 2255, to prevent a miscarriage of justice.

Respectfully Submitted,


ALBERTO SOTO LARA
Reg. No. 04801-070 A/B
F.C.I. Elkton
P.O. Box 10
Lisbon, OH 44432

Dated: February 16, 2005
Lisbon, Ohio

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by first class U.S. Mail this 16th of February, 2005, to:

Hiedi E. Breiger
United States Attorney Office
District of Massachusetts
1 Courthouse Way
Boston, MA 02210

Dated: February 16, 2005


ALBERTO SOTO-LARA
Petitioner